

COMPENSATION AND ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into as of July 8, 2009, by and between the United States Environmental Protection Agency, Region 8 ("EPA"), Lincoln County Credit Union (the "Bank") and Buford Fallis ("Fallis") hereinafter referred to collectively as the "Parties".

WHEREAS, the response action at the Libby Asbestos Site (the "Site"), Lincoln County, Montana implemented by EPA is authorized by Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300;

WHEREAS, the Fallises are the owners of the land and improvements known as 16296 Bull Lake Road, Troy, MT 59935 (the "Property") located within the Site. The Fallises maintained a residence on the Property, which contains exposed vermiculite;

WHEREAS, on August 18, 2001, EPA issued an Amendment to an Action Memorandum which was originally issued on May 23, 2000 in which EPA documented the determination that cleanup was necessary at properties such as the Fallises because of asbestos contamination. The selected response action to be implemented at the Property will result in the demolition of the Fallis' residence;

WHEREAS, the Fallises certify that the Property was acquired with no knowledge of the asbestos contamination. The Fallises have granted to EPA, its employees, agents, contractors and representatives access to the Property for the purpose of implementing the selected response action, including the demolition of the Fallis residence;

WHEREAS, the Fallises have no outstanding loans on the improvement.

WHEREAS, the Fallis residence has been appraised by Brad Kelsch of Howell and Associates, and the fair market value of the improvements determined to be a total of \$50,000. A garage, which is not being replaced, is valued at \$4,000. An evaluation of replacement cost of the home using a modular unit company of the Fallises choosing, (including foundation, utility connections and general contractor costs) is approximately \$88,908.00.

NOW, THEREFORE, in consideration of the mutual promises, obligations, and agreements set forth below, the parties agree as follows:

Section 1. Definitions

As used in this Agreement:

- (a) The term "EPA" shall mean the United States Environmental Protection Agency, Region 8.
- (b) The term "Bank" shall mean the Lincoln County Credit Union of Libby, Montana.
- (c) The term "Funds" shall mean those monetary funds placed by EPA into an escrow account at Lincoln County Credit Union for the purposes established in this Agreement.
- (d) The term "Escrow Manager" shall mean the Bank official charged with implementing the disbursement of Funds pursuant to this Agreement.
- (e) The term "Allowable Expense" shall mean those expenses related to the replacement of the Fallis residence with a modular home, including an allocation of \$68,108.00 for the modular residential unit, \$14,000.00 for a foundation, \$1,800 for utility connections and \$5,000.00 for General Contractor costs.
- (f) The term "Escrow Account" shall mean the account setup, maintained and disbursed by the Bank for the purposes established herein.
- (g) The term "Property" shall mean the Fallis' residence and surrounding land owned by the Fallises at 16296 Bull Lake Road, Troy, MT..

Section 2. Establishment of Escrow Account

EPA shall transfer to the Bank EIGHTY-EIGHT THOUSAND NINE HUNDRED EIGHT DOLLARS (\$88,908) within thirty (30) days of execution of this Agreement by EPA. This money shall constitute the Funds and shall be placed by the Bank into a non-interest bearing account which shall become the Escrow Account. EPA shall pay the Bank 1% of Funds that are distributed for replacement of the Fallis' residence for the performance of its duties under this Agreement.

Section 3. Disbursement of the Funds

The Escrow Manager shall disburse the Funds in response to bi-weekly draws presented by the Fallis's general contractor. Each draw shall include a signed certification that all the bills included therein are for expenses related to the replacement of the Fallis' residence. The general contractor shall be a licensed independent contractor. All work performed shall be pursuant to valid city permits, where such permits are required. The Escrow Manager shall perform inspections of all the work.

Section 4. Termination of the Escrow Account

The Escrow Manager shall continue the disbursements until the Funds are exhausted or until one year after EPA notifies the Fallises that the property is available for the construction of a new home, whichever occurs earlier. If any portion of the Funds are left in the Escrow Account after December 31, 2010, those Funds shall be returned to EPA and the Escrow Account shall be terminated. Exhaustion of the Funds on or before December 31, 2010 shall also constitute a termination of the Escrow Account. If EPA, the Escrow Manager, or the Bank determines that the Funds have been applied for or used for activities other than replacement of the Fallis residence, EPA may instruct the Bank and/or Escrow Manager to immediately terminate the Escrow Account. In such case, no further restoration funds will be provided and all claims against EPA will be considered released pursuant to Section 11.

Section 5. Express Powers of the Escrow Manager and the Bank

Without in any way limiting the powers and discretions conferred upon the Escrow Manager and the Bank by the other provisions of this Agreement or by law, the Escrow Manager and the Bank are expressly authorized and empowered:

- (a) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to implement the powers herein granted; and
- (b) To make all distributions and payments as described herein.

Section 6. Monthly Valuation

The Escrow Manager shall furnish to the EPA a statement confirming the value of the Escrow Account on at least a monthly basis.

Section 7. Instructions to the Escrow Manager and Bank

All orders, requests and instructions by EPA to the Escrow Manager and/or Bank shall be in writing. The Escrow Manager and the Bank shall be fully protected in acting without inquiry in accordance with EPA's orders, requests and instructions. The Escrow Manager and the Bank shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of EPA hereunder has occurred.

Section 8. Notice

All notices under this Agreement will be sent by overnight delivery service or certified or registered mail to the address of the applicable party set forth below:

If to EPA:

Mr. Mike Cirian
U.S. Environmental Protection Agency, Libby Information Center
501 Mineral Ave.
Libby, MT 59923

If to the Bank or Escrow Manager:

Chari Lucas
Lincoln County Credit Union
P. O. Box 1586
Libby, Montana 59923

If to Fallis:

Mr. Buford Fallis
16296 Bull Lake Road,
Troy, MT 59935

Section 9. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by EPA, the Bank, and the Fallises.

Section 10. Immunity

The Escrow Manager shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of the Escrow Account, or in implementing any orders, requests or instructions by EPA issued in accordance with this Agreement.

Section 11. Release of Claims

The Fallises hereby agree that the payments made pursuant to this Agreement shall

Fallis Relocation Cost Estimate Sheet

- 1 The relocation is for two adults.
The relocation will last no longer than one calendar year from the start of the
- 2 demolition.
- 3 After 30 days, lodging is reduced by 45% for months 2 -12 and per diem is reduced by 55% for months 2 - 6. After 6 months per diem ends.
- 4 Use an average of 30 days per month.
- 5 The family will use alternate (non-hotel) lodging for the duration of the relocation.
- 6 No kenneling costs will be needed.
- 7 There is a need for storing of household items.
- 8 The contents from the home will fill two connex boxes.
Miscellaneous expenses (such as laundry) will be not be reimbursed due to the
- 9 nature of the logging.

Per Diem			
	1st Month	2-6 Months	
Head of Household	\$ 39.00	\$ 17.55	
Adult #2	\$ 39.00	\$ 17.55	
	\$ 2,340.00	\$ 5,265.00	
			\$ 7,605.00
Lodging			
	1st Month	2-12 Months	
One apartment/ house for duration	\$70/night	\$38.50/night (\$1,155.00 per month)	
	\$ 2,100.00	\$ 12,705.00	
			\$ 14,805.00
Storage for household items			
Connex box (2)	Mob/Demob	Monthly rental	
	\$350/each way	\$120/month/box	
	\$ 1,400.00	\$ 2,880.00	
			\$ 4,280.00
Total costs for relocation for one year:			\$ 26,690.00

constitute full settlement and just compensation, under all applicable laws and regulations, of any and all claims they may have against the EPA for actual replacement and compensation for the value of all buildings and personal items demolished or diminished by, or disposed of pursuant to implementation of the selected response action. The Fallises assume full responsibility for the restoration activities. EPA shall not be deemed to be a party to any contract for the restoration. Fallis agrees to hold EPA harmless for any liability associated with such restoration, including, but not limited to, claims resulting from accidents or from defective construction.


Section 12. Reservation of Rights

Nothing in this Agreement shall preclude the Fallises from pursuing any legal remedy that they may otherwise have against any other entity to recover damages and seek compensation not covered by or included in this Agreement. Nothing in this Agreement shall preclude EPA from pursuing any legal remedy that it may otherwise have against any potentially responsible party in order to recover costs EPA incurs for response actions at the Site.


Section 13. Choice of Law


This Agreement shall be administered, construed and enforced according to the laws of the State of Montana and of the United States of America.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed, where appropriate, by their duly authorized respective officers or employees.



Buford Fallis

July 13-09


Darlene Fallis


Carol Rushin, Acting Regional Administrator
United States Environmental Protection Agency

7/30/09


Chari Lucas
Lincoln County Credit Union

Concurrence Copy

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Wk
7-14-09
8EPA-SR

Runner ✓
7/15/09
EPA-SR

MB
for cdm
7/16/09
8EPA-L

Ben Murray
7/15/09
EPA-SR

Denise
7/15/09
EPA-L

Campbell
7/23/09
EPA

Dyl
EPA-RC
7/16/09

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Buford Fallis July-13-09
Buford Fallis

Darlene Fallis
Darlene Fallis

ORIGINAL SIGNED BY
Carol Rushin

JUL 30 2009

Carol Rushin, Acting Regional Administrator
United States Environmental Protection Agency

Chari Lucas
Chari Lucas
Lincoln County Credit Union